

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND MAGNOLIA SCIENCE
ACADEMY #4.

OAH CASE NO. 2013050421

ORDER GRANTING MOTION TO
DISMISS

On May 9, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming the Los Angeles Unified School District (District) and the Magnolia Science Academy #4.

On June 19, 2013, the District filed a motion to extend procedural timelines due to Student's non-participation in a mandatory resolution session. On June 24, 2013, OAH issued an order granting the District's request to extend the procedural timelines and ordered the parties to participate in a resolution session within 15 days from the date of that order.

On July 23, 2013, the District filed a motion to dismiss based upon Student's failure to participate in a mandatory resolution session. Student has not filed an opposition to the District's motion to dismiss.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

DISCUSSION

The District's motion is supported by the sworn declaration of the District's employee, Sue Talesnick, an administrator in the District's Division of Special Education Compliance Support and Monitoring Department. Based on the available record and declaration of Ms. Talesnick, the District received Student's complaint on May 10, 2013. On May 21, 2013, the District sent a letter to Student attempting to schedule a resolution session for May 24, 2013, at 3:00 p.m. in the District's Los Angeles offices. The letter informed Student of her option to waive the resolution meeting by the agreement of both parties and participate in mediation in lieu of a resolution session. The letter also provided Student with a telephone number if she had any questions. The District did not receive a response to its May 21, 2013 letter from Student and Student's parent did not show up for the scheduled May 24, 2013 resolution session.

Pursuant to OAH's order of June 24, 2013, on or about June 27, 2013, Ms. Talesnick sent Student a second letter offering as second resolution session for July 3, 2013. The June 27, 2013 letter again informed Student of her option to waive the resolution meeting by the agreement of both parties and participate in mediation in lieu of a resolution meeting and also provided Student with a telephone number if she had any questions. Student did not respond to the June 27, 2013 letter, and Student's parent did not appear for the second resolution session on July 3, 2013.

The District contends that the due process hearing in this matter may not occur until Student has participated in a resolution meeting, unless both parties have agreed to waive the resolution meeting as required by law.

The District is correct that Student is required to participate in a resolution meeting before a due process hearing could occur unless both parties agree to waive the resolution session. Under IDEA, OAH has discretion to dismiss a complaint if the student and/or parent refuses to participate in a resolution session and the district provides appropriate documentation supporting such motion to dismiss.

Here, the parties have not participated in a resolution meeting or mediation. Student has not proposed that either the resolution meeting or mediation be waived, and the record fails to establish that both parties have agreed to waive the resolution meeting or agree to proceed to mediation in lieu of the resolution meeting. The District established that prior to filing its motion it made reasonable efforts to convene a resolution meeting within 15 days of receiving Student's May 9, 2013 complaint, and then again within 15 days of receiving OAH's June 24, 2013 order. Further, the record shows that the District attended a June 13, 2013 mediation scheduled by OAH but Student failed to appear. Student has not responded to the District's motion to dismiss or otherwise provided OAH with a reason for failing to participate in a resolution meeting. Therefore, the District's motion to dismiss is granted.

ORDER

1. The District's motion to dismiss is granted, and the matter is dismissed without prejudice.
2. All previously scheduled dates are vacated.

IT IS SO ORDERED.

Dated: July 29, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings